

REMARKS

At the time the present Office Action was mailed, claims 1-36 were pending in this application. Claims 35 and 36 have been canceled from the application in this response, without prejudice, and without commenting on or conceding the merits of the outstanding rejection of these claims. Claims 1 and 3 have been amended in this response. More specifically, claim 3 has been rewritten in independent form without narrowing or otherwise changing the scope of this claim. Accordingly, claims 1-34 are now pending in the application.

In the Office Action mailed November 8, 2002, claims 1-36 were rejected. More specifically, the status of the application in light of this Office Action is as follows:

(A) Claims 1, 3, 4, 6, 7, 9, 10, 12, 13, 18, 19 and 21-23 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,315,573 to Bradley et al. ("Bradley");

(B) Claims 2, 8, 11, 14-17, 20 and 24-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bradley; and

(C) Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Bradley in view of U.S. Patent No. 4,071,597 to Karabedian ("Karabedian").

The undersigned attorney wishes to thank the Examiner for engaging in a telephone conference on February 5, 2003 to discuss the present Office Action. During the telephone conference, the Examiner agreed that claims 3 and 18 are patentable over the applied references. The following remarks summarize and expand upon the points discussed during the February 5th telephone conference.

A. Response to the Section 102(b) Rejection Over Bradley

Claims 1, 3, 4, 6, 7, 9, 10, 12, 13, 18, 19 and 21-23 were rejected under 35 U.S.C. § 102(b) as being anticipated by Bradley.

1. Claim 1 Is Directed to a Vessel for Observing a Chemical Substance Including a Wall Portion Having an Axis and a Background Material Having an Asymmetrical Contour About the Axis

Claim 1 is directed to a vessel for observing a chemical substance. The vessel includes a base portion and an optically transmissive wall portion projecting away from the base portion. The base portion and the wall portion define an interface region at an interface between the base portion and the wall portion. The base portion and the wall portion also define an exterior region and an interior region. The interior region is configured to contain the chemical substance and has an opening through which the chemical substance can pass. The vessel further includes a background material having a first surface and a second surface. The second surface faces opposite the first surface. The first surface is fixedly attached to the base portion and/or the interface region. The first surface is visible through the wall portion from the exterior region. The wall portion has an axis and the background material has an asymmetrical contour about the axis. Accordingly, the background material allows a practitioner to view the chemical substance against the background material without having to separately support and move an adjacent piece of background material, such as a sheet of paper or a paper towel.

2. Bradley Discloses a Strengthened Glass Jar

Bradley discloses a glass jar for containing foodstuff. The glass jar has a thin, symmetrical coating of a thermoset material over its heel and bearing exterior surfaces. The coating acts as a thermal insulator to protect the coated glass from sudden temperature changes and the associated thermal stresses that can cause breakage. The thermoset material is preferably clear and unpigmented.

3. Bradley Fails to Disclose or Suggest a Wall Portion Having an Axis and a Background Material Having an Asymmetrical Contour About the Axis

Bradley fails to disclose a vessel for observing a chemical substance including, *inter alia*, a "wall portion having an axis" and a "background material having an asymmetrical contour about the axis," as recited by claim 1. For example, Bradley discloses a glass jar having a symmetrical coating around a portion of the bearing exterior

surface. Consequently, Bradley fails to disclose each and every element of claim 1. Therefore, the Section 102(b) rejection of claim 1 is improper and should be withdrawn.

Moreover, there is no motivation or suggestion to modify Bradley's jar to include a background material having an asymmetrical contour because such a modification would render Bradley's jar unsatisfactory for its intended purpose. The MPEP provides that "[i]f [a] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP § 2143.01. The intended purpose of Bradley's invention is to provide a glass container for foodstuff that can withstand thermal stresses without breaking. If the coating on Bradley's jar were modified to be asymmetrical and if the jar was subjected to a sudden temperature change, the coating would create asymmetrical and therefore non-uniform thermal stresses around the jar that would increase the likelihood of the jar breaking. This is in direct contrast to one of Bradley's stated purposes for his invention which is to "[protect] the lower heel and bearing surfaces of the container from thermal shock." (Bradley at col. 2, lines 27-28.) Furthermore, a jar with an asymmetrical coating would likely be perceived by consumers as having a packaging defect. Thus, the jar and corresponding foodstuff would be less appealing to consumers. Accordingly, such a modification of Bradley's glass jar would render it unsatisfactory for its intended purpose. Therefore, one of ordinary skill in the art would not be motivated to modify Bradley's jar to include an asymmetrical coating.

Claim 3 has been rewritten in independent form. In light of the agreement reached during the telephone conference on February 5, 2003, the Section 102(b) rejection of claim 3 will be withdrawn.

Claims 4, 6, 7, 9, 10, 12 and 13 depend from claim 1. Accordingly, the Section 102(b) rejection of these claims should be withdrawn for the reasons discussed above with reference to claim 1 and for the additional features of these claims.

In light of the agreement reached during the telephone conference on February 5, 2003, the Section 102(b) rejection of claim 18 will be withdrawn.

Claims 19 and 21-23 depend from claim 18. Accordingly, the Section 102(b) rejection of these claims should be withdrawn for reasons discussed above with reference to claim 18 and for the additional features of these claims.

B. Response to the Section 103(a) Rejection Over Bradley

Claims 2, 8, 11, 14-17, 20 and 24-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bradley. Claims 2, 8, 11 and 14-17 depend from claim 1. As discussed above with reference to claim 1, Bradley does not disclose or suggest all of the features of claim 1, nor is there a motivation to modify Bradley to include the missing features. Accordingly, the Section 103(a) rejection of claims 2, 8, 11 and 14-17 should be withdrawn for the reasons discussed above with reference to claim 1 and for the additional features of these claims.

Claims 20 and 24-26 depend from claim 18. Accordingly, the Section 103(a) rejection of these claims should be withdrawn for the reasons discussed above with reference to claim 18 and for the additional features of these claims.

1. Claim 27 Is Directed to a Vessel for Observing Chemical Substances Having a Background Material With a First Colored Region and a Second Colored Region Different Than the First Colored Region

Claim 27 is directed to a vessel for observing chemical substances. The vessel includes a base portion and an optically transmissive wall portion projecting away from the base portion. The base portion and the wall portion define an interface region at an interface between the base portion and the wall portion. The base portion and the wall portion also define an exterior region and an interior region. The interior region is configured to contain the chemical substance and has an opening configured to removably receive the chemical substance. The vessel further includes a background material having a first surface and a second surface. The first surface faces opposite from the second surface. The first surface of the background material is fixedly attached to the base portion and/or the interface region. The first surface of the background material further includes a first colored region having a first color and a second colored region having a second color different than the first color. The first surface of the background material is visible through the wall portion from the exterior region. Accordingly, the

vessel is particularly suitable for observing chemical reactions for which the outcome can have one or more of a variety of colors.

2. The Office Action Fails to Establish a *Prima Facie* Case Under Section 103

A *prima facie* case of obviousness under Section 103 requires, *inter alia*, that the prior art references disclose or suggest all of the claim limitations and that the references or the knowledge generally available to one of ordinary skill in the art provide a suggestion or motivation to modify the references. (MPEP at § 2142.) For the reasons discussed below, the Office Action fails to establish a *prima facie* case of obviousness under Section 103.

First, Bradley fails to disclose or suggest all of the limitations of claim 27. For example, Bradley fails to disclose or suggest a background material including "a first colored region having a first color and a second colored region having a second color different than the first color," as recited in claim 27. Bradley merely discloses an opaque, white coating. Second, there is no motivation to modify Bradley's jar to include two colored regions, each with a different color. There is no motivation because such a modification would render Bradley's jar unsatisfactory for its intended purpose. For example, a foodstuff jar having a coating with multiple colors could appear to consumers to contain spoiled or discolored food. Accordingly, there is no motivation to modify Bradley's jar to include a background material with "a first colored region having a first color and a second colored region having a second color different than the first color." Therefore, the Office Action fails to support a *prima facie* case of obviousness under Section 103(a). Therefore, the Section 103(a) rejection of claim 27 should be withdrawn.

Claims 28-34 depend from claim 27. Accordingly, the Section 103(a) rejection of these claims should be withdrawn for the reasons discussed above with reference to claim 27 and for the additional features of these claims.

Claims 35 and 36 have been cancelled and therefore the rejection of these claims is now moot.

C. Response to the Section 103(a) Rejection Over Bradley and Karabedian

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Bradley in view of Karabedian. Karabedian fails to cure the above-noted deficiencies of Bradley to properly support a Section 103(a) rejection of claim 5. For example, the combination of Karabedian and Bradley fails to disclose or suggest a vessel including a "wall portion having an axis" and a "background material having an asymmetrical contour about the axis," as recited in claim 5. Karabedian merely discloses a container with a symmetrical heat-shrunk cellular sleeve. Furthermore, Karabedian fails to cure the lack of motivation to modify Bradley's jar. Thus, the combination of Karabedian and Bradley fails to support a *prima facie* case of obviousness. Accordingly, the Section 103(a) rejection of claim 5 should be withdrawn.

D. Conclusion

In light of the foregoing amendments and remarks, all of the pending claims are in condition for allowance. Applicant therefore requests reconsideration of the application and an allowance of all pending claims. If the Examiner wishes to discuss the distinctions between the claims and the cited references, or any other distinctions, the Examiner is encouraged to contact the undersigned at (206) 264-6465. Additionally, if the Examiner notices any informalities in the claims, he is also encouraged to contact the undersigned to expediently correct any such informalities.

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Respectfully submitted,

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APPENDIX

VERSION WITH MARKINGS TO SHOW CHANGES MADE

1. (Amended) A vessel for observing a chemical substance, comprising:
a base portion;

an optically transmissive wall portion projecting away from the base portion, the base portion and the wall portion defining an interface region at an interface between the base portion and the wall portion, the base portion and the wall portion defining an exterior region and an interior region, the interior region being configured to contain the chemical substance and having an opening through which the chemical substance can pass, the wall portion having an axis; and

a background material having a first surface and a second surface facing opposite from the first surface, the first surface of the background material being fixedly attached to the base portion and/or the interface region, the first surface of the background material being visible through the wall portion from the exterior region, the background material having an asymmetrical contour about the axis.

3. (Amended) ~~The vessel of claim 1~~ A vessel for observing a chemical substance, comprising:

a base portion;

an optically transmissive wall portion projecting away from the base portion, the base portion and the wall portion defining an interface region at an interface between the base portion and the wall portion, the base portion and the wall portion defining an exterior region and an interior region, the interior region being configured to contain the chemical substance and having an opening through which the chemical substance can pass; and

a background material having a first surface and a second surface facing opposite from the first surface, the first surface of the background material being fixedly attached to the base portion and/or the interface region, the first surface of the background material being visible through the wall portion from the exterior region;

wherein the base portion and/or the interface region have an inner surface defining the interior region and an outer surface defining the exterior region, and further wherein the background material is disposed between the inner and outer surfaces.